

Decision 02-09-005 September 5, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SIERRA PACIFIC POWER  
COMPANY for Approval of a Proposed  
Distribution Performance-Based Ratemaking  
Mechanism Supported By a Cost of Service  
Study.

Application 00-07-001  
(Filed July 3, 2000)

**OPINION ON REQUEST FOR AN AWARD OF COMPENSATION**

This decision grants The Utility Reform Network (TURN) an award of \$20,934.88 in compensation for contributions to Decision (D.) 01-12-005.

**1. Background**

In D.01-12-005, we approved in part an all-party settlement of this proceeding, and otherwise dismissed the application of Sierra Pacific Power Company (Sierra Pacific) for Commission approval of a proposed Performance Based Ratemaking (PBR) mechanism. TURN, along with Sierra Pacific and the Commission's Office of Ratepayer Advocates (ORA) were the only active participants in the proceeding. The all-party settlement deferred virtually all important issues raised in Sierra Pacific's application to its next General Rate Case (GRC), and the Commission dismissed the remaining issues in the application. TURN subsequently filed a "Request for an Award of Compensation to The Utility Reform Network for Substantial Contribution to D.01-12-005" (Request) on February 11, 2002. No responses to the Request were received.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. NOI to Claim Compensation**

TURN filed a timely NOI to claim compensation on October 20, 2000, as required by § 1804(a). In a ruling dated October 26, 2000, ALJ Sarah Thomas found TURN eligible for compensation.

### **4. Contributions to Resolution of Issues**

In order to be compensated for its participation in a Commission proceeding, a party must demonstrate that its participation substantially assisted in the making of a Commission order or decision. As we stated in the past, this requirement is necessary to ensure “that the compensated participation provides value to ratepayers.”<sup>1</sup> A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the ALJ or the Commission adopted.

A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.

TURN initially protested Sierra Pacific’s application, including Sierra Pacific’s proposal for the inclusion in rates of certain large categories of costs. TURN, ORA, and Sierra Pacific entered into settlement negotiations, resulting in a proposed all-party settlement that resolved some issues and deferred other issues to Sierra Pacific’s next GRC. In response to a query from the ALJ, TURN indicated its support for dismissal of Sierra Pacific’s application.

The Commission did not approve Sierra Pacific’s application. The Commission did approve those aspects of the settlement that deferred issues to a future proceeding, consistent with TURN’s position in the settlement. While the

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<sup>1</sup> See D.98-04-059, at 39.

Commission rejected the remainder of the settlement, its dismissal of the non-deferred issues is also consistent with TURN's position, as expressed both in its initial protest and in its response to the ALJ's query. Despite (or perhaps because of) the unusual procedural aspects of this case, the above facts show that TURN made a substantial contribution to D.01-12-005.

## **5. The Reasonableness of Requested Compensation**

TURN requests compensation of \$12,647.50 in attorneys' fees, \$8,129.00 in expert fees, and \$503.38 in expenses, totaling \$21,279.88.

For its attorney Robert Finkelstein, TURN claims 7 hours at an hourly rate of \$280 (for work performed in 2000) and 27.25 hours at a rate of \$320 (for work performed in 2001).<sup>2</sup> For its attorney Matthew Freedman, TURN claims 3.25 hours at an hourly rate of \$190. For its witnesses, William Marcus and Jeff Nahigian of JBS Energy, Inc., TURN respectively requests 46.9 hours at a rate of \$160 per hour and 6.25 hours at a rate of \$100 per hour. Direct expenses totaled \$503.38, with the bulk of it related to photocopying and phone costs.

Given (among other things) the nature of the case, the evident lack of duplication, the relatively moderate number of hours claimed, and our finding of substantial contribution, we find that the hours claimed by TURN are reasonable. Accordingly, we will compensate TURN for all hours claimed.

TURN correctly notes that the Commission has previously awarded compensation for Mr. Finkelstein's work in 2000 at the rate of \$280. (*See*, D.00-11-002.) We will apply that rate here as well. At the time that TURN filed its request, the Commission had not yet determined a rate for Mr. Freedman, nor

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<sup>2</sup> TURN also claims 8.5 hours for compensation-related work by Finkelstein, at half the requested hourly rates.

for Mr. Finkelstein's work in 2001. Since that time the Commission has set these rates at \$180 per hour for Mr. Freedman and \$310 for Mr. Finkelstein's work in 2001. (See, D.02-06-070.) We will apply those rates here, and adjust TURN's request accordingly.<sup>3</sup>

TURN states that the hourly rates requested for its expert witnesses reflect both the actual recorded or billed costs that TURN incurred in retaining their services, and that the requested rates were previously approved by the Commission (in D.01-10-008) for Mr. Marcus and Mr. Nahigian for a similar time frame. We will accordingly apply the requested hourly rates of \$160 for Mr. Marcus and \$100 for Mr. Nahigian.

TURN's claimed costs of \$503.38 for photocopying, postage, and telephone are reasonable, and we approve compensation for that amount.

## **6. Award**

We award TURN \$20,934.88 for its substantial contribution to D.01-12-005. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75<sup>th</sup> day after TURN filed this compensation request, and continuing until the utility makes full payment of the award. Pursuant to Pub. Util. Code § 1807, Sierra Pacific is the utility is responsible for payment of this award.

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<sup>3</sup> The adjustment (also applied to the hours related to the claim for compensation) results in the compensation for attorney time being reduced from the claimed \$12,647.50 to \$12,302.50, a difference of \$345.

**Waiver of Comment Period**

This is a compensation decision pursuant to Pub. Util. Code § 1801 and Rule 77.7(f)(6) of the Rules of Practice and Procedure. Accordingly, the otherwise applicable 30-day review and comment period is being waived.

**Findings of Fact**

1. TURN timely requested compensation for its contribution to D.01-12-005.
2. TURN's requested hours and hourly rates for its attorneys, as adjusted, are reasonable.
3. TURN's requested hours and hourly rates for its expert witnesses are reasonable.
4. The miscellaneous costs incurred by TURN in this proceeding are reasonable.
5. TURN made a substantial contribution to the Commission's decision in this proceeding.

**Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$20,934.88 for its substantial contribution to D.01-12-005.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network is awarded \$20,934.88 as described above for its substantial contribution to Decision 01-12-005.
2. The award shall be paid by Sierra Pacific, pursuant to Pub. Util. Code § 1807. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.13, with interest beginning on April 27, 2002, and continuing until Sierra Pacific has made full payment of the award.
3. This proceeding is closed.

This order is effective today.

Dated September 5, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

Commissioner Henry M. Duque, being  
necessarily absent, did not participate.

## Compensation Decision Summary Information

<b>Compensation Decision(s):</b>	D0209005
<b>Contribution Decision(s):</b>	D0112005
<b>Proceeding(s):</b>	A0007001
<b>Author:</b>	Allen
<b>Payer(s):</b>	Sierra Pacific Power Company

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
The Utility Reform Network	2/11/02	21,279.88	20,934.88	Failure to justify hourly rate

## Witness Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Robert	Finkelstein	Attorney	The Utility Reform Network	\$280	2000	\$280
Robert	Finkelstein	Attorney	The Utility Reform Network	\$320	2001	\$310
Matthew	Freedman	Attorney	The Utility Reform Network	\$190	2000	\$180
William	Marcus	Economist	The Utility Reform Network	\$160	2001	\$160
Jeff	Nahigian	Economist	The Utility Reform Network	\$100	2001	\$100